

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**DENISE L. GRANT, as Administratrix  
of the Estate of Khynesha E. Grant,**

**Plaintiff,**

**v.**

**PENNSYLVANIA DEPARTMENT  
OF CORRECTIONS, et al.,**

**Defendants.**

**Case No. 1:20-cv-338-SPB-RAL**

## MEMORANDUM ORDER

This civil rights lawsuit was commenced on December 1, 2020 by Denise L. Grant (“Plaintiff”), as Administratrix of the Estate of her daughter, Khynessa E. Grant, a former inmate at SCI-Cambridge Springs who died while in the prison’s custody. Plaintiff alleges that various individuals who were involved in her daughter’s care committed medical malpractice and/or violated Khynessa’s federal rights by rendering constitutionally inadequate treatment. Among the named Defendants in this civil action are five registered nurses employed by the Pennsylvania Department of Corrections (“DOC”): Ashley Chiocco (“Chiocco”), Brenda Chizmar (“Chizmar”), David McPhilomy (“McPhilomy”), Jeffrey Moles (“Moles”), and Wendy Payne (“Payne”). These individuals, along with the DOC itself, are collectively referred to as the “DOC Defendants.”

On January 21, 2021, Plaintiff filed her Amended Complaint, ECF No. 23, which remains the operative pleading. Relevant for present purposes are Count I, which alleges violations of Rhynesha Grant's rights under the Eighth and Fourteenth Amendments, and Count III, which asserts state law negligence/medical malpractice claims. The DOC Defendants have moved to dismiss the claims against them in Counts I and III. ECF No. 36.

On August 6, 2021, Magistrate Judge Lanzillo issued a Report and Recommendation (“R&R”),<sup>1</sup> ECF No. 42, in which he recommended that the DOC Defendants’ motion to dismiss be GRANTED in part and DENIED in part, as follows:

- A. GRANTED as to Count I (Federal Constitutional Claims) to the extent this Count purports to assert a Fourteenth Amendment claim against any Defendant and to the extent it is asserted against DOC Defendants Chizmar and McPhilomy;
- B. DENIED as to Count I (Federal Constitutional Claims) to the extent this Count is asserted against DOC Defendants Chiocco, Moles, and Payne;
- C. GRANTED as to Count III (Negligence/Medical Malpractice) to the extent this Count is asserted against DOC Defendants McPhilomy and the DOC; and
- D. DENIED as to Count III (Negligence/Medical Malpractice) to the extent this Count is asserted against DOC Defendants Chiocco, Chizmar, Moles, and Payne.

Judge Lanzillo further recommended that the claims against Defendants McPhilomy and the DOC be DISMISSED with prejudice but that the dismissal of Count I against DOC Defendant Chizmar be entered without prejudice and with Plaintiff being granted leave to file a second amended complaint as to this claim.

Finally, Judge Lanzillo recommended that the Clerk of Court be directed to terminate McPhilomy and the DOC as Defendants in this action.

Objections to the R&R were due on or before August 20, 2021. To date, no objections have been filed.

Having conducted a *de novo* review of the Amended Complaint, the DOC Defendants’ motion to dismiss, all documents pertaining to Defendants’ motion, and Judge Lanzillo’s well-reasoned Report and Recommendation, the following order is entered:

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<sup>1</sup> The case has been referred to United States Magistrate Judge Richard A. Lanzillo for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

AND NOW, this 26th day August, 2021;

IT IS ORDERED that the Corrections Defendants' Motion to Dismiss Amended Complaint, ECF No. [36], shall be, and hereby is, GRANTED in part and DENIED in part, as follows:

- A. the motion is GRANTED as to Count I (Federal Constitutional Claims) to the extent that Plaintiff purports to assert a Fourteenth Amendment claim against any Defendant; the motion is further GRANTED with respect to Plaintiff's Eighth Amendment claims against DOC Defendants Chizmar and McPhilomy;
- B. the motion is DENIED as to Count I (Federal Constitutional Claims) to the extent Plaintiff is asserting Eighth Amendment claims against DOC Defendants Chiocco, Moles, and Payne;
- C. the motion is GRANTED as to Count III (Negligence/Medical Malpractice) to the extent the claims therein are directed against DOC Defendants McPhilomy and the DOC; and
- D. the motion is DENIED as to Count III (Negligence/Medical Malpractice) to the extent the claims therein are asserted against DOC Defendants Chiocco, Chizmar, Moles, and Payne.

IT IS FURTHER ORDERED that the claims against Defendants McPhilomy and the DOC shall be, and hereby are, DISMISSED with prejudice. Plaintiff's Eighth Amendment claim against Defendant Chizmar is DISMISSED without prejudice and with leave to be amended in a Second Amended Complaint on or before September 17, 2021. The DOC Defendants shall file their response to the operative pleading within fourteen days thereafter. **In the event Plaintiff chooses not to file a Second Amended Complaint, the Court's dismissal of her Eighth Amendment claim against Defendant Chizmar shall be converted to a dismissal with prejudice, without further notice.**

In light of the foregoing, the Clerk of Court is directed to terminate David McPhilomy and the DOC as Defendants in this action.

Finally, IT IS ORDERED that the Report and Recommendation of Magistrate Judge Lanzillo, issued on August 6, 2021, ECF No. [42], is adopted as the opinion of the Court.

A handwritten signature in black ink, reading "Susan Paradise Baxter". The signature is fluid and cursive, with the first name "Susan" being the most prominent.

SUSAN PARADISE BAXTER  
United States District Judge

cm: Counsel of Record  
United States Magistrate Judge Richard A. Lanzillo  
(via CM/ECF)